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Day One - Wednesday 26th May 2021

Panel 2 – Digital Markets Act (DMA) & Digital Services Act (DSA) – roles & responsibilities, effectiveness & future-proofing, international consensus

ALEJANDRA DE ITURRIAGA GANDINI: Good morning everyone, good afternoon sorry. Now is the time for one of the hot topics not only in the EU but across the world and we will address it from the regulators' point of view and the industry point of view. As you know, European response to the challenges posed by digital platforms, are two key pieces of legislation, the Digital Markets Act and the Digital Services Act. We have today an impressive panel to discuss about both of them.

To launch the debate I would ask our speakers to focus on three strategic issues. What from their perspectives, is the principle added value of DMA and DSA for the digital markets in Europe? The second question would be what could be the impact of these regulations at a national level? And lastly what in their view could be improved in the Commission's proposal? We will start with my colleagues Annemarie and Benoít, from the regulators' perspective, to gain this regulators' perspective. Annemarie Sipkes is Director of Telecommunications and Transport and Postal Services, Netherlands Authority for Consumers and Markets, ACM and incoming BEREC Chair 2022. Please, Annemarie, the floor is yours.

ANNEMARIE SIPKES: Thank you Alejandra and thank you very much for announcing me. Congratulations, I am so happy that IIC and BEREC have this joint event once again. I think it is very timely and I think the agenda shows we almost have too many issues to

discuss between European regulators on the one hand and industry on the other. Thank you very much for having me on this panel, and I am looking forward to exchanging and deepening our insight with my fellow panellists.

Maybe to start I think it is very clear looking at the past year, how important the digital world is to all of us. How especially in the last year, we have been able to reap the fruits of the digital platforms and we have been working through digital means, we've been reaching out to friends, to colleagues, to families, we have went to school, we have had our only entertainment in our leisure time very often, through digital means. So we are all I think very much in agreement that there are so many benefits of the huge developments we have seen in the digital world, and the digital economy has so many opportunities and presented so many chances to both households, to consumers, to citizens of Europe, and to businesses as well.

But also, if you study what is going on and if you're catching up with all that is happening and you do see that there are also risks involved, and I think that awareness has grown in Europe over the past years, and in that respect I think I am very proud to on behalf of BEREC share our thoughts on the DMA and I think our overwhelming stance is of course that is very timely that the European Commission and European Parliament are both working very hard to add this new piece of legislation to the toolbox, to make sure that we have a proper legal framework to add to open and transparent digital markets, to make sure that we all can still profit from all the advantages while tempering the risks.

So what is I think you asked two, three questions Alejandra, I think the first added value and the one thing we strongly underline and agree with the Commission, from the perspective of BEREC, is that the DMA is an asymmetric instrument. It's not intended to regulate the internet, that will kill all innovation and take away its advantages. It's specifically targeted to certain practices by certain large gatekeepers, so the asymmetric character of the regulation is, I think, a very strong point that we strongly support.

I'll give you a few examples of where that brings us and where we see that the DMA really makes a difference for the better. Two examples from end user's perspective. The first one is that the DMA gives end users again better ownership of their personal data,

because it tells large gatekeepers, it restricts them in their practices to gather personal data, combine it and use them without the consent, the specific consent of those users. So because it prohibits gatekeepers to just use the data for whatever they please, it explicitly demands that they ask for permission from the end user that his or her data are used for specific purposes. I think that giving back ownership of that data to the end user is very welcome to all people in Europe.

The second example is it makes it more open. It gives end users the right to install or uninstall software applications, that you choose. So if you do use a platform service, you cannot be obliged to use all the applications but you do have the right to install or uninstall software applications, as long as it's technically feasible. So that gives more choice to end users and this blocks what I would call the 'Hotel California Clause'; you enter a platform and you can never leave. It opens up and makes sure that end users can benefit better from all the advantages throughout the digital economy and not having one choice defined, all other choices taken away.

So that's from an end user perspective, but of course digital platforms also help on business site, and here I think small and medium size enterprises benefit from DMA, and the DMA will help making sure that innovation and openness are guaranteed within the platform economy. And two examples are one, it enables, it gives as a right to interact with end user that have acquired on the platform and gives them the right to interact with them subsequently on a different platform, or in a different way more directly. So we're going to hear also as users are given the choice, reach out to the consumer on the platform if you want to make an extra offer or wanted to take the contract outside the platform, that is a right that you have, another platform that the large gatekeeper cannot block you from. I think that opens up the economy, the digital economy, and makes it more open to innovation.

It also contributes to the level playing field where it explicitly prohibits large gatekeepers from refraining from keeping the possibility from SMEs to file complaints with the relevant authorities, should they wish to. So here again, given the level of difference between the really large gatekeepers that DMA is targeting and the SMEs throughout the European

Union, it levels the playing feel if they encounter any problems. So I think in this respect the asymmetric character of the DMA, targeting adverse behaviour from large gatekeepers, is really adding to the way in which we in Europe try to get a legal framework to make sure that we can all profit from an open transparent and innovative digital platform. So that was in answer to your first question, on the added advantages that we from BEREC see in the DMA.

Now, of course, in BEREC we are a federation of NRAs and we're trying to we also look at it from our national experience and then your second question was what are the implications of the DMA for national level. I think these implications, of course the implication the DMA targets the large gatekeepers who are more active on a European scale, this is the first thing, and rightfully as I already said this is one of the key components we fully support. In addition to that regulations can only be efficient and effective if it's rooted if following evidence-base, and if it's rooted in experience of both end users and business alike throughout all national markets. Here on a national level we need to do we need to evaluate what is happening out there, we need to monitor the markets, how is compliance, what does it look like from the user perspective or from the business side as well as consumer or household side.

I think it will be wise to have an information and complaints desk not just in Brussels, where the enforcing authority will of course be with the European Commission, but also to make it as easily accessible as possible, to make national information and complaints desk as it were to make sure that that information is channelled directly through Brussels and the fourth one, is what you see in practice you have very clear rules, but reality is not just stranger than fiction, reality is of course very slippery and changing in regard to legislation so it needs to be brought into practice and we will see that probably end users or businesses will say, will complain, that large gatekeepers are not complying with the DMA.

Here I think at BEREC we see that we have very thorough experience and good experience with dispute resolution. How does one evaluate the way that these regulations, the rules and these remedies are put into practice, how does this work in the

day-to-day dealings that the large gatekeepers on the one hand and the SMEs on the other hand helping each other and disputes will of course arise, they do all the time and what one needs is a fast mechanism to make sure that there is, that these disputes are resolved, and that they are resolved in swift, transparent and consistent way across the Union.

I personally think that is, given the pervasiveness of the digital markets, I think this is a whole lot of to work put the DMA into practice, so I do think it will be wise to make sure that at a national - that you get all your information, your data, and all the practices you get a collection mechanism to make sure that all the information and all that's needed to make the DMA into a success. We do have a national mechanism in place to supplement the enforcement that will remain [inaudible] users. So that is I think, what a national level will be implied, we all have to make sure to help and assist with proper enforcement of the DMA, to make sure that we close the feedback loop, and I do think the third question the largest risk is that the best way of improvement is to make sure that we make sure that we put, for example, implementation rules, put a mechanism in place to make sure that this is done as transparent and as effective and efficient as possible. So then we do have, in Europe, a transparent and swift mechanism to make sure we can still be assured that we can all profit from the open innovative data platform economy that we have been enjoying this year so much. I think that is my contribution at this point.

ALEJANDRA DE ITURRIAGA GANDINI: Thank you Annemarie, that was quite interesting, from your point of view, BEREC has expressed and working on, answering all the questions. Now, I have a question to pose to you, regarding a national level, what elements do you think that national independent authorities would want to monitor the, in order to support the European authority? Which do you think are these elements that you would think that national independent authority would want?

ANNEMARIE SIPKES: I'm so sorry Alejandra, I think I got half your question.

ALEJANDRA DE ITURRIAGA GANDINI: Sorry, ...

ANNEMARIE SIPKES: You said on a national experience and then I am so sorry, my system let me down.

ALEJANDRA DE ITURRIAGA GANDINI: Ok I will repeat it, yes. Regarding what was said, what do you think, what are the elements, the key elements that our national independent authorities would want to monitor in order to support the EU authority?

ANNEMARIE SIPKES: Yes, as I said, the DMA once it is enforced it has to be put in practice and then of course the proof of the pudding is in the eating, is what will happen in practice. So, I think it is very important that national independent authorities keep tabs on what is happening in the practice. One example that I gave, in dispute resolution one might add to making sure that a practice is developed, that is swift and transparent and consistent throughout the Union. So I think there it can, national independent authorities, we have several I think several mechanisms in place, within Europe, where you have ways of reaching out to the market, of coming, reaching decisions and making sure there is the right interplay between the national specific circumstances on the one hand, and the European legislation and the role of the Commission, and to make sure that there is agreement, a consistency across the various markets because of course, this will not be effective if we all, if we have divergent practices of course. But I do think that we have various national independent authorities, BEREC being one of them, and extensive experience in making sure that we on the one hand we take into account the, account the national specificities, because businesses differ and markets differ on the one hand. But also the fact we want one European context and one European regulation put into place.

So I think in for example, the way that we do dispute resolution within BEREC and make sure that within a very short period of time, a couple of months, we both reach a decision as well as make sure that it is in full alignment with the European, with the European practice and it is guaranteed that that could really help in strengthening the implementation.

ALEJANDRA DE ITURRIAGA GANDINI: Great, that's good. I completely agree with you. So, now, it is time to, to have another point of view from the media regulator on the other draft regulation, which is the DSA, thank you, we will come to you Annemarie, thank you very much, when we all join together, all the group.

Now as I said, it is time to discuss on the DSA, which is the other regulation that is being analysed in this and we are going it talk with Benoît Loutrel who is a member of the Board

of the CSA. Good afternoon Benoît. How are you?

BENOÎT LOUTREL: Hello, good afternoon, Alejandra.

ALEJANDRA DE ITURRIAGA GANDINI: How are you?

BENOÎT LOUTREL: Good, thank you.

ALEJANDRA DE ITURRIAGA GANDINI: I will give you the floor, to share with you which are the views on the three main questions that I have posed to you and to of course to discuss with you, which are the main key elements that for the DSA poses to media authority that you represent, as a member of the Board on the DSA, thank you very much.

BENOÎT LOUTREL: Thank you very much Alejandra. Well, I guess, I should say bluntly that the DSA is really a major improvement and we are really happy that this major initiative that was launched by the Commission. The DSA clearly is a way to fix the weak points we had in the E-Commerce Directive, with its limited liability of platforms. As we all know, platforms hold power, some platforms hold very large power and the greater the power you have, the greater your accountability should be, the greater your responsibility, your social responsibility should be.

So the question really that we are trying to address with the DSA with this proposal from the Commission is how do you develop the responsibility, how you develop the accountability of players operating at scale? The new element here is really that we have players which operate at scale and how do you define new standards for what I would call an algorithmic responsibility, an algorithmic accountability. So I guess the aim is the same but it is completely different from what you were used to implement through editorial responsibility. When you think of editorial it's the media, TV, radio, those media operate on a granular basis. They take one content after the other and when you start to establish and enhance responsibility to make sure they participate in achieving public objective, you regulate on a granular basis. Here, clearly, we have to invent new way to regulate because when you operate a platform, you operate at scale. So it's a very nice challenge. How do you regulate those platforms, make them more responsible and accountable without preventing them from operating at scale.

And, with the DSA we have new key ingredients which is duty of care and the transparency requirements. Both are new and are not new I guess. Not new in the sense that platform tried to take care of the customers, of the members of the platform, and to try and to be transparent but for the time being, they've been operating on a self-regulation basis and experience has proven us that this has very low credibility and we cannot rely anymore on self-regulation and the DSA is about how you establish legally enforced standard, legally enforced duty of care, legally enforced transparency requirements, and this will make a major difference, because the DSA will bring the governance, which will give credibility to this transparency requirement and which will allow to have everybody participate in the regulation of those platforms. Because suddenly we will have a capacity to put faith in what they are telling us and have a stronger debate, a public policy debate on those issues.

This approach's impact build on what we are starting to develop in the AVMS Directive. It goes one step further, it's more open, it's more adapted I guess to the new type of platform we are having, where at the heart of it, you have user generated content and key elements which of course are very important for us, media regulator, of values, of defending the freedoms that we have in Europe, which really needs to have a specific care to protect them. So we think this will be a very interesting adventure and we are eager to participate in it.

The interesting thing is how you - the DSA or the digital revolution, because I guess it comes initially from the digital revolution we are facing, creates new dynamics and they will have new dynamics including for regulators. How do you operate on a national basis, but with players which are more global by nature, or even if they are initially locals they have all the dreaming of becoming global. So I think it is created a new dynamic, we see that in the governance features which are proposed by the Commission in the first draft of the DSA, is how you change the way the regulators operate, both at the same time as localised institutional capacities in each Member State because you need to be localised, you need to have this link with each Member State, especially when you deal with content where you have some element of culture, of history. At the same time we are part of an EU network and I heard that ERGA was a federation of regulators, I suspect - sorry, that BEREC was a federation of regulators. I suspect that ERGA is a network of regulators. We have to

learn how to work both on national and on an EU basis and to act more and more collectively, to define the standard at EU level which is a way to enshrine the European single market, and also to monitor and enforce locally because that's where the harm can take place and that is where we have to deliver values for the EU citizens.

This is maybe what I can say at this point to introduce the discussion, thank you very much.

ALEJANDRA DE ITURRIAGA GANDINI: Thank you very much Benoît, that's quite interesting, coming from a media regulator your perspective is quite good for all of us. I will have a question for you as well regarding the enforcement procedures structures of the DSA. So as the DSA covers different activities such as online content and market, online marketplaces activities, do you think that the DSA provides adequate structures for the from enforcement regarding systemic online content both at national and European level?

BENOÎT LOUTREL: Thank you. Well, I guess it is a tricky thing, of course the DSA by nature has been developed as a horizontal instrument. At the same time we have to recognise as you said it, that we have to focus on it. On one side the marketplaces with the clear question on how do you protect the customers. Also the marketplaces how do you prevent the harm that can arrive from those marketplaces and the very different nature of platforms which are content platforms. Thinking particularly of social networks or even of search engines which are relevant in this case.

Here, what you are changing in many cases not on a commercial basis but it's content, it's information. It's capacity to participate in a public debate and of course it's true that in both cases we recognise that you need transparency but how do you enforce the transparency? How do you make sure that this transparency requirement is met. It's really different in both nature. The nature of the platforms are really different. Of course being a media regulator, a proud member of ERGA, we feel more interested by the part dealing with content platform, with social media, with search engine, because those elements, these platforms operate in what I would call the informational space. You could think of the Roman Forum, the Greek Agora, as a place where we change our ideas, where the public opinion is formed, where you brew the democracy, which is different from what takes place on marketplace. Marketplace you trade service or you trade goods, but it's different.

So clearly yes, we have a question here and we will see how the policy debate will unfold at EU level, both in Parliament and in the Council and maybe we will see some evolution at some point I suspect.

ALEJANDRA DE ITURRIAGA GANDINI: Thank you. Thank you very much Benoît. We will come to you later on when we are all together and then Annmarie as well.

Now it is time to discuss both regulations with DSA and DMA with the industry members. We have a great panel and we have first Johan Keetelaar, he is Director of Public Policy, Head of Connectivity and Access, EMEA at Facebook. Hello, Johan, how are you?

JOHAN KEETELAAR: Hi Alejandra.

ALEJANDRA DE ITURRIAGA GANDINI: He was working at ACM and we know him from BEREC as well, he was former member of BEREC as well. So thank you Johan and the floor is yours.

JOHAN KEETELAAR: Thank you Alejandra and it's a pleasure to be here today on this great panel and to see so many great speakers next to me.

So, I will mainly comment on the DMA but I will definitely also touch upon the broader regulatory discussions including the DSA, as Benoît explained from his responsibilities.

Let me start with DSA. I think we are as Facebook obviously we expect to be in scope of both the DSA and the DMA and that goes without saying and I will dive a little bit deeper into the scope of the DMA later, but the DSA I think we agree on all the points that Benoît just made. I think it's known to many here today that Facebook has called for regulation of content for a couple of years right now. I am also happy to see, Benoît now in his new capacity at CRA in France. Two years ago now, I think it was, we did a pilot together with the French Ministry and some other French regulators about hate speech and how to deal with it and Benoît was leading the French delegation, I was part of the Facebook delegation at that time. We tried to open up for the regulators because we anticipated the DSA, which was not called the DSA at that time, to come into force at some point in order to explain better because we needed to do a better job about how we deal with content regulation, as complex as it is.

I think from there we have moved in a very constructive direction and I think if we look at the draft DSA we agree on the concepts and on many points, even though of course the devil is in the detail and we are engaging together with policy makers on this.

On the DMA, I will spend a couple of minutes speaking about the DMA because of course there, this could have impact on Facebook services. It will have impact on Facebook services and I think the main question on DMA is I see also echoed in BEREC's activities to date, the DMA is now in about getting the regulation right.

When I say so, I think it's important to think about it a little bit deeper. Because, if you look at the current policy discussions in Europe and in Brussels, it seems and this is quite unique, that almost everybody, all stakeholders or policy makers involved are in some agreement on what the DMA should look like. I think again here also Facebook takes the position that we believe that the DMA is definitely an important and necessary step but that we also need to get this right.

I will explain that and I will also come Alejandra, if you allow me, with a couple of suggestions of how to make it slightly better than we have seen in the draft right now. I will also dig in a little bit from my Telco experience and as a member of BEREC, even though I think that platforms, as most of the people acknowledge, are very different from the traditional Telco markets, as many on the conference today know, I think we can learn quite some things also from those regimes and I think that BEREC has been vocal on a couple of those.

Take a little bit closer look at the DMA and start with the scope. I think it's quite obvious as I said that Facebook will be in scope and also many of our tech peers expect to be in scope too, but still the question is relevant, which companies will be in scope and which not, and I think there should be clear boundaries and there should also be a clear mechanism about how you will be in scope and also how you will potentially get out of scope in certain circumstances.

Then if you look at it a little bit deeper into the scope, I think it is also important to look at what services will be the scope, and of course the definition of the core platforms services is in the DMA, but I think it is important for all those companies that will be in scope to be

perfectly clear on what this means before those services that will be in scope, because the data ecosystem as I think you can best call it, is complex and also, the lines between the different services are not continuously clear and also evolving over time. I think this is a very important different experience for example, if you compare it with the other ex ante regime as we know it, also from the BEREC and the Telco experience, which are more standardised markets, more predictable in terms of technology developments. So you had the recommendation from the European Commission about which markets to regulate and now we enter this area of platforms and once you are designated as a gatekeeper service, then you tick the boxes you need to comply with. That is important to take into account about when you speak about getting the regulation right.

Separate from the scope, I think we should also acknowledge that it is pretty novel what the draft DMA proposes here, because, until now, what we have seen in the regimes that we know dealing with ex ante regulation or the competition related regimes as we know them from Brussels and the individual Member States, there was a link first of all to market power and then some kind of conduct by the company and now with the DMA this is different, because once you tick the box of being in scope you need to comply with certain rules.

So, when I speak about getting it right, we need to get it right that we are aware of the consequences of ticking those boxes.

I am not saying this only because of Facebook's interest but I think it is important to consider also the interest of the broader ecosystems where the other gatekeeper core platform services operate.

Quite often you see that there are more actors active in those ecosystems, so potential consequences on those services still have impact on those actors and definitely on all the consumers on those platforms, and here comes the link with the Telco regimes. Since this is a BEREC event I focus a little bit on the similarities and differences. Here comes the link with the Telco regimes as we know them to date. You always have the trade-offs about what the impact of the measures will be, and I am not advocating for some kind of Article 7 procedure as we have seen it between the NRAs and the European Commission for

instance, but I think there should be some mechanism where the impact of the obligations, and the per se obligations in particular, will be measured because the DMA is getting into the heart of the product design basically of those companies. That's novel, that's different from any regime we have seen so far.

I think one key suggestion for improvement therefore would be, and I have seen this also in the BEREC opinion basically, which I was very happy with to see is that regulatory dialogue and maybe this is also caused by me having over 15 years of experience with ex ante regulation in Telco markets and having been engaged in so many dialogues about obligations, compliance, what it means to comply with rules, leading industry groups where everybody was affected by the potential obligations, was able to speak about the impact of the proposed obligations, so maybe I am influenced still or carrying the weight of that past with me? But for me it's not only novel but also something where we should really assess the risks of entering a regime where companies and not only Facebook, of course, but I think it will be potentially 8, 10 maybe even more companies will need to comply with 18 as it is now right now. If you look at Article 5 or 6 from the DMA, 18 obligations, some of them with immediate effect, without potentially knowing exactly what it means to comply. Since it is the goal to increase competition, and to increase innovation and to protect consumers, I think that we should take into account all angles before imposing those. I think the regulatory dialogue is one thing, and of course there is a mechanism for that in the DMA but I think that some of the Article 5 provisions, especially those that go into the heart of the product design process should be coming together with this regulatory dialogue because there could be potential harm for consumers as well as the broader ecosystem.

I will pause here and I am happy to dive a little bit deeper into other aspects of the DMA or DSA in the second instance, thank you.

ALEJANDRA DE ITURRIAGA GANDINI: Thank you Johan. That is quite good, quite interesting your point of view from the Facebook perspective and DMA and DSA. I want to pose you a question, regarding, taking into account your experience with Telco regulation and being a member of the BEREC, what is your view on the BEREC, of the BEREC position on the DMA especially regarding what are the do's and don'ts that the Telco regime

are going to regulate the platforms?

JOHAN KEETELAAR: Thank you Alejandra and apologies for clicking away already. I think that first of all, I think it's very good that BEREC is involved in the broader DMA discussions. One thing I didn't mention just now, the interplay between the different legislative files, it's not only the EECC where of course the BEREC members are the first enforcer, but it is also, I am glad to see Benoît here, but it's also the AVMSD for instance. It interplays with the DMA because of the definition that is used for the core platform services, be it video sharing platform services as well as number of independent services which is also the scope of the AVMSD and the EECC.

It's key that all the files, but also the general competition regime, is in line with the DMA. Even though I know that the European Commission positions the DMA as something - it is not competition law I think we should bear in mind that it needs to exist, next to existing competition law and also a single market tool. We don't want first of all to have a patchwork of regimes in all the countries but also not to have a better of enforcement crossing over because I think that would be detrimental to the single market goals and for the consumers basically in the European Union. That point was addressed also in the BEREC opinion, Alejandra, as I've read it so that's an important flag by BEREC I would definitely like to support.

I think the other one relates more to what I already said in my first part is also that I noticed and I think BEREC speaks here from its own experience, BEREC also called out for the regulatory dialogue, maybe not in the opinion of BEREC for all that obligations, as they were drawn out in the DMA but I, the way I read it, maybe I read it in a sort of biased way, the way I read it was there was definitely a call for more dialogue because I think BEREC rightly acknowledges the differences between the core platform services, if you look at Google, Facebook, Amazon, who will speak after me on this call and Apple for instance, everybody has its own business model. So then if you have like generic obligations supplying to all of those platforms, I think that it is something that you need to consider carefully. I won't going to repeat my first remarks but I think it's obvious that and you know this Alejandra also from your own experience, even in harmonised markets across Europe,

where you have at a national level Telco markets that you need to regulate. You need to have this regulatory dialogue, you need to speak with the SMP operators to understand what it is, what the impact is of a proposed measure. So I think that is part of the BEREC opinion that we definitely would support.

ALEJANDRA DE ITURRIAGA GANDINI: Definitely. I agree with you. Thank you very much Johan. We will come to you as well when we wrap altogether. Now it's time starting to give the floor to James Waterworth. James Waterworth is Director of EU Policy at Amazon. So, James? The floor is yours.

JAMES WATERWORTH: Thank you very much for the introduction and for the invitation to participate in this conversation today. For those of you who may not be an Amazon customer already, a couple of data points. I hope you are an Amazon customer but if you're not, Amazon has been active in the EU for just over 20 years. In the last 10 years we have invested round €75 billion, we now have 7 marketplaces across the EU, 7 countries in which we have primary marketplaces. We now employ about 135,000 people in the EU, and I am talking about Amazon employees, I'm not talking about postmen and women for example who we work with, who bring packages to your front door if you have made an order from us.

Amazon's primary business is as a retailer, and using Amazon's marketplace or indeed another marketplace, a competing marketplace, allows small businesses to compete with large retailers such as Ahold, Carrefour, Lidl, Edeka in a way that would previously have not been possible.

So what does that all this mean and what should we think about when it comes to the Digital Markets Act that I want to touch on first. Well, the Digital Markets Act provides for 18 automatically applicable obligations, the dos and don'ts of the legislation, across 8 core platform services. Services such as search engines, social networks and online intermediation services. This means if you add it up, there's nearly a hundred different ways that these obligations could apply. Is this sufficiently precise to ensure that no beneficial innovation is lost? I think you can tell by the way I ask my rhetorical question, that we are concerned the answer is no and the obligations need to be more tailored to

fit. There needs to be a case-by-case approach to what services should be regulated. Something that the European Commission has previously recognised for regulated industry like telecoms and something that BEREC members are expert at. Television is a much more homogeneous activity in comparison to the activities that will be covered by the Digital Markets Act. So, it's logical that if a case-by-case approach is necessary there, it's even more applicable for the Digital Markets Act. The Digital Markets Act ex ante an automatic approach puts a deep focus on speed of enforcement over fair process, and quality of outcomes. It could lead to significant and undesirable unintended consequences. This tension cannot be resolved with the current set up of the DMA. What we need to ensure is that there is a proper regulatory dialogue, for all obligations before they come into effect.

Companies should be able to present reasons why obligations should not apply, or to discuss how they should apply. Let me give you three examples of why this might be necessary, I will keep them brief. Firstly, to ensure strong competition in retail and competitive prices. A recent study that I saw by the Belgian Consumer Authority, Organisation sorry, showed that where Dutch chains had opened shop in Belgium, prices were 7% lower than in a comparable chain in a different part of the country. For people on a medium salary, retail prices matter. A blunt measure like the DMA, should clearly not reduce competitive pressure on large retailers.

Secondly, we need to ensure we prevent fraud. Thirdly, we need to ensure we keep consistently high levels of innovation. Two examples of what I mean here. Firstly, innovation such as voice assistants. For the billion people on the planet who have some form of disability, voice assistants provide access to important online services in a way which other people take for granted. This innovation is not trivial, it is vital. We need to ensure the rules of the DMA facilitate ongoing innovation of this kind.

Secondly, research I saw by [*name*] published a couple of weeks ago shows that regulation such as the DSA could reduce expenditure on innovation about €3.5 billion a year in the EU by reducing competitive pressure on local players. That would be an undesirable outcome.

Moving on secondly, to the DSA. It's obviously welcomed, we welcome the fact that the DSA reconfirms the core principles of the e-commerce directives such as the country-of-origin principle and no general monitoring obligation. The DSA, like the E-Commerce Directive before it, is horizontal in nature and sets rules for all online services, that mean it can address every sectoral challenge. We will always need rules like the Copyright Directive, the Terrorist Content Online Regulation, or importantly for a retailer like Amazon, rules on products and safety and market surveillance.

In some aspects the DSA deviates from this horizontal approach. For example, it requires marketplaces to verify traders, a practice we very strongly support. To give you an example from 2020, only 6% of attempts to create accounts on Amazon passed our robust verification processes. Beyond trader verification, there are other parts of the DSA which seems to have been drafted with specific services in mind, but nevertheless apply to everybody. The sale of a toothbrush is completely different to the uploading and distribution of a video. Social media and video sharing platforms, the sharing of content, can quickly grow exponentially and this may raise specific questions. If that is what the very large online platforms chapter seeks to address, then we need to limit to it those types of services.

The upcoming General Product Safety Directive, something I am sure every regulator on this call is extremely familiar with, is the best place to legislate for product safety, and the European Commission will be publishing its proposal in June this year. The correct goal of the DSA is to protect people and to ensure a high level of confidence in online services. It is therefore strange to see a high level of protection, only for retail sales made on Amazon, because it is a very large online platform. All customers deserve the same level of protection wherever they shop.

Finally on enforcement. Co-ordination is desirable, especially in cross-border commerce or cross-border settings. For content moderation, I am sure the digital services co-ordinators proposed in the DSA may help to resolve conflicts. As a retailer, the practical reality is we will continue to deal with more than 500 European product regulators across for example, product safety, environmental compliance, chemicals, intellectual

property and much more. For many of these questions, the DSA will be far too blunt of an instrument.

So in conclusion the DMA should cater for case-by-case assessment so we avoid negative unintended consequences and the DSA should not try to deal with issues such as product safety, where other legislation will do this more effectively. Secondly, this legislation should protect all consumers. Thank you.

ALEJANDRA DE ITURRIAGA GANDINI: Thank you very much James, I absolutely agree with you, with the not overlapping idea of these both regulations within the current regulation that we have. So I have a question for you regarding DMA, you have talked about unintended consequences, you talk about the possibility of increased fraud, could you give more detailed example about this?

JAMES WATERWORTH: Sure, yeah. I think one of the most important attempts to make the DMA and DSA coherent with each other which they should be, is preventing fraud, clearly something the DSA sets out to do. If we look at the DMA one of the provisions for those following the text closely, is Article 5(c) seeks to ensure that a small business using an online intermediary can communicate directly with customers.

What we know from transactional services like Amazon, is that because money changes hand, unfortunately there is a risk of fraud. Indeed, this is acknowledged by the public authorities, so we see every year, that Europol comes out with advice to online shoppers before Christmas every year and the number one piece of advice is only to use trusted services. If we were to end up with a situation where consumers were to be brought into contact with untrusted sellers without the protection that is provided to them by using a trusted brand such as Amazon, with all the consumer guarantees that we put in place, then we could lead to a situation which other authorities are explicitly warning against. We should be mindful not to facilitate fraud.

The second thing I want to mention is a completely different consideration. One of the provisions in the DMA requires that the service provide objective ranking, the words are slightly different but that's effectively what it is. Objective ranking in results on a page, and the trouble with working out what is objective, is that sometimes that can be quite

subjective. Let me give you a theoretical example. If Amazon were to introduce – indeed we have for some products - an environmental label. We have a badge today called Climate Pledge Friendly, and we were to integrate that into our ranking parameters, there would be some brands who would be happy with that model of displaying products, and some brands who would be unhappy with that model of displaying products. And it will be difficult for us to know which is the right objective result without being able to have either the freedom to run our business, or to have a proper case-by-case dialogue with regulatory authorities.

ALEJANDRA DE ITURRIAGA GANDINI: Great, that's a good example. Thank you very much James, now I will give the floor to David Wheeldon, he Is Group Director of Policy and Public Affairs of Sky. David, you have the floor.

DAVID WHEELDON: Hello Alejandra, hello everybody, it's great to be here, back at the IIC again and on a forum with such esteemed regulators. I am just looking forward to the moment that we can all be together in-person again.

So look I am going to take a slightly contrary view to the positions taken by Johan and James about the DMA and the DSA, so we can at least have debate here, because consensus frankly is less exciting. I quickly wanted to outline where Sky sits in all this, and remember Sky is a broadcaster, an internet service provider, a mobile provider and an OTT provider. So we're across a whole series of heavily regulated sectors in broadcasting and telecoms, subject to content rules and ex ante rules for all of our existence and we're operating across Europe in 6 countries with 24 million customers, so from our perspective, the DSA and the DMA are not necessarily radical or novel. In many ways, they are founded on regulatory concepts that are pretty well understood and proven in EU law. I mean if anything, I think we're rather late to the party in all of this. It's pretty unusual, it's highly unusual for companies with such massive economic and societal impacts to go unregulated for so long and of course we all know that a number of countries have recognised that and have begun to impose and create their own national frameworks and national interventions, whether that's SDG in Germany or the Hate Speech Law in France, or the Digital Competition Act in Germany.

So, the imperative now is to address the issues that have been identified in Europe and in those countries, and at the same time, ensure the integrity of the single market which is vital to all of us, and I think all of the companies on this platform would agree that the integrity of the single market is vital to our business operations and to good customer and citizen outcomes across Europe. But the reason why I say I don't think that these instruments are necessarily novel, is that in many ways they are bringing in well-trodden regulatory concepts or indeed they are bringing accountability to things that are already going on. That's particularly the case in the DSA where content moderation is being untaken already, by online intermediaries, by platforms. The issue really is about oversight and accountability. And I think it's a slightly false premise to suggest that the DSA is in any way creating a dilemma or a dichotomy between online freedoms and safety. Actually those two things are one and the same as the platforms themselves recognise, and that's why they do take action. But they take action which is unaccountable and the DSA I think is a welcome step in bringing some accountability and transparency to what they are doing.

Similarly, I think the DMA follows a well-trodden path of ex ante rules applying to companies that have a significant power in the market. Now I appreciate and listening to Johan with his former telecoms regulator hat on, there are some significant differences, and particularly in the way in which the rules will be applied. But, the rules themselves are ones that are well understood, for example, the Telecoms Framework already applies various ex ante rules or allows the application of ex ante rules that include the opening up of networks and restrictions on bundling for example. So again, I think those are well understood concepts, the application of them is going to be different in the DMA, because we are applying those rules to a different type of sector, but they are not novel in and of themselves. And of course it's these kind of rules and precisely what help companies like Sky grow and develop in particularly in the telecoms market, into profitable and responsible businesses today that benefit many millions of EU citizens.

The second pillar about the national impact I think we should all recognise that there is obviously a big debate going on about enforcement and in particular national versus EU competence, and of course ERGA is right to stress this in the context of the DSA, it's been

a key part of the discussion. Each Member State will have their own context to consider and of course we are operating in 6 different countries so we understand how those differences can be applied. In fact we take lessons from AVMSD and the Telecoms Framework where NRAs play a crucial oversight role within the single market, but there does need to be clarity I think on what extent Member States can apply national rules. I mean, for example, the DMA states that national legislation can't target gatekeepers but what about other definitions. In Germany, for example you have the undertakings with paramount significance of competition across markets, is this the same or different from gatekeeper, I think there's some interesting questions there to be explored. I think we probably have some natural sympathy with the view that enforcement can't only be left to the Commission, and also I think would welcome the idea of the European Digital Services Board which is certainly going to be a key role in guiding and co-ordinating that enforcement.

Then I just want to touch before I leave on two areas where I think the rules could be improved, or indeed where there might be some significant risks. The first area of risk actually is really the interplay with other legislation that a number of panellists have raised. I think the Commission's response and approach here is logical, so the proposed regulations need to complement and not replace the sector specific laws. The last thing we want to do is great double jeopardy, and I think in relation to the DMA specifically, we need to give care to those areas that are already regulated under AVMSD or the EECC, and you know there is a debate that I have heard going on that the scope of the DMA ought to be widened or thresholds should be changed to make it futureproof, but actually, there is a real risk there that you're going to create double jeopardy for companies that are already facing significant regulation and indeed ex ante rules which would not be good for those sectors, or for the European economy.

Then the second area I want to flag is a key part of the DSA, Article 6 which really goes to the issue of liability which I know is one that gets the platforms in particular very exercised and is an area of global controversy. It's interesting that Article 6 within the DSA does appear to be inspired a little bit by the Section 230 of the US Communications Decency Act, which I find somewhat surprising that the Commission should have gone

down that route and adopted something extraterritorial. I think I would take the view on that specifically, that we do not think that hosts that can claim to be eligible for immunity when in fact we know that jurisprudence, the CGEU has already said that disabling access to content doesn't make you liable, it's the promoting of content that makes you liable. We're not sure that Article 6 really reflects that properly. We certainly welcome the need for more legal certain and immunity but only for truly passive intermediaries, and we would like to see that those positions, the position of those platforms that optimise content, means that they don't rely on liability exemptions in the same way as truly passive platforms.

I think that's an interesting debate, it's one that was actually raised by Nick Clegg this week, one of Johan's bosses, in an article where he said that it's not practical for a platform like Facebook to be liable for billions of posts each day, but again I think when we look at other areas of regulation, my mind goes straight to banking, and the billions of financial transactions that go on each day and regulated banks are held responsible for compliance with money laundering regulations and undertake due diligence so they know their customers and it does seem to be that is something that is perfectly plausible for platforms to be responsible for. So putting it more broadly, both of these regulations I think are a step in the right direction, and I don't think that they are particularly novel in concept. The important thing is that the main objective is to deal with specifically identified and systemic problems that stem from particular business models of what are a handful of large and dominant companies in the digital space, and that we don't end up with double jeopardy for the rest of European economy.

ALEJANDRA DE ITURRIAGA GANDINI: Thank you David, that was a very, very important point of view from Sky. I come back to the things that you mentioned in your speech regarding the DMA, regarding consistency so in the rules applied in the DMA so how do you think we may or the European Commission in this regulation, will ensure consistency in the rules that apply to all size of businesses, while avoiding barriers to enter in the market, how do you think that could be done?

DAVID WHEELDON: That's a really interesting question isn't it, and I think for us it's

about proportionality. We completely understand that one size doesn't fit all, but look take the example of the physical world relating to the traceability of traders. We don't really see why that shouldn't apply to the whole ecosystem. Why should Article 22 of the DSA, the 'know your business customer', any apply to online marketplaces when we know that there are thousands of big and small online services which are not marketplaces but which facilitate potentially criminal activities, and are accessible via other platforms, and yet those platforms are not going to be required to know anything about those users and those customers, and that seems to me to be an inconsistency in the application of rules.

I think that is something that I hope will come out in the debates around particularly that instrument. We have many due diligence obligations, that we need to follow, and breaking any of the rules can mean that we lose our license to broadcast. It doesn't matter whether we're big or small, or old or young in the market, you can be a single channel and still lose your license to operate if you disobey the rules. It's that consistency, that gives confidence to both businesses entering the market and also to users who know that the same rules apply to everybody. And I think that is going to be of really important principle in these rules.

ALEJANDRA DE ITURRIAGA GANDINI: Thank you, thank you David. So we'll come back to you when we are all together, and now it's time for Carlos Rodriguez Cocina, he is a Director for European Regulatory Affairs, Head of Brussels office for Telefonica. Hello Carlos.

CARLOS RODRIGUEZ COCINA: Hello Alejandra can you hear me well, everything ok?

ALEJANDRA DE ITURRIAGA GANDINI: We listen to you but a little bit low.

CARLOS RODRIGUEZ COCINA: I will speak a little bit louder then. Thank you very much Alejandra and thanks for the invitation to IIC and BEREC to Telefonica to participate in this panel. I would like to start my remarks with the DMA indicating why Telefonica as a telecom operator cares about the DMA. I would like to leave you also a couple of ideas in terms of how do we think ex ante regulation of online gatekeeping platforms will be tackled in the DMA and what are the areas of improvement that we see in this provision. Afterwards I will touch a little bit upon our views on the DSA as well.

Starting with point why do we care which is not perhaps evident for a telecoms operator. First, we care because we share the Commission's vision that there is a need for fairness and contestability in the online platform economy. We've reached this conclusion based on our experience as competitors, and as partner of companies that potentially will qualify as online gatekeeping platforms. First as competitors, what we have seen in the last years is that number of these companies have entered the space we have traditionally occupied in the provision of voice, messaging and video services, but they have done so with a very different regulatory regime that the one we have on our backs. So basically with no regulatory constraints compared to ourselves which leads to a situation of unequal competitive market.

So basically from that perspective, we have seen how things have changed during the last years, and now this is happening also in the need for infrastructure to extend that we're in a process of virtualisation of network infrastructure. We see these companies also entering into that space, potentially disintermediating ourselves from our end customers becoming a pervasive force end to end in the digital value whole chain.

If we look at our perspective, as let's say partners of these companies and commercial relationship that we have with them, what we see is a case of losing bargaining power on ourselves through the years, because of the phenomenal power that these companies are acquiring. So from both perspectives we think that the DMA can have a potential beneficial effect in terms of taming or curtailing this trend of over expansion of these companies across the digital value chain, in terms of providing more opportunities, more innovation, more competitiveness in the digital economy. All these should be positive outcomes and results of this provision.

The intention how to tackle ex ante regulations of online gatekeeping platforms, this of course the big challenge and what we have said here constantly is we should look at experiences we have with Telecoms Regulatory Framework, as many of our previous speakers and fellow panellists have indicated. This has been one of the core contributions of reflecting on how 20 years of Telecoms regulatory framework with all its flaws but also with all its and successes in promoting competition could lead to good learnings for the

DMA. We have the experience in terms of how to identify relevant markets, how to seek companies that have significant market power, how to impose remedies on those companies, and we're actually quite happy to see that some of that philosophy has permeated in DMA as well. There is some level of comparison you could establish between core platform services and relevant markets, and there is some level of comparison you can establish between being considered as an online gatekeeping platform and having significant market power and at the end there is also some parallelism between the obligations in DMA and the remedies that are imposed under the Telecoms Regulatory Framework.

However, one of the points that can be improved in DMA, because nothing is perfect, right? So there are a couple of things that can be in our view improved, one from a general perspective and one from a more concrete and specific perspective. From a general perspective, it has been mentioned before, the institutional set up concentrates too much power on the Commission and perhaps does not reflect enough the contribution that may come from the national competent authorities, including the members of BEREC, the National Regulatory Authorities, because precisely of this experience they have gathered with 20 years of application of the Telecom Regulatory Framework. So from this perspective we will feel that these regulatory authorities have the closest perspective of the individual markets, and they can be very useful in terms of monitoring the compliance with the obligations, defining actually the remedies, monitoring compliance and the final enforcement become also sort of one-stop-shop or a first point of contact for business users or end users that may have complaints about the way obligations may not be fulfilled by online gatekeeping platforms.

We see some room also for national authorities in the regulatory dialogue, understood from our perspective as a way of defining the technical implementation of the obligations, not that much as a way of determining obligations that are directly or not directly applicable, also directly applicable but as a way of determining what would be the technical requirements for the accomplishment of those obligations.

The second point of improvement that we will see in the DMA is something related to a

subject very dear to our hearts, is a little bit provocative we know, but this is the comparison between the net neutrality regime we have as Telco operators, versus the lack of a neutrality regime in services or in services space. As we know we have these net neutrality provisions that impede us from blocking, throttling or discriminating in favour of our own products and services in the network space, but we do not have something similar for services. And if we look nowadays at the hurdles or burdens that users may have when accessing any content of their choice, any service of their choice, through any device of their choice, these hurdles happen in other layers of the value chain, not in access network but in other parts of the digital value chain.

We do have references to the open internet and some scattered provisions in the DMA that point in this direction. For instance, and it was mentioned in one of the first speeches, the idea of users being able to uninstall, reinstall applications, or use the applications or software of their choice, but there is nothing structured as such as something we could identify as a digital neutrality provision.

How to do this is in our view, we have the provision on Article 6 about self-preferencing but very limited we're only pointing at ranking results of search engines we could deduct that it's related to that sort of activity, but in our view this should be much broader and this prohibition of self-preferencing should tackle the core platform services in a way that would allow to insert this net neutrality regime happens at network level and at services level as well to the benefit mainly of end users. Those are the points that identify as most relevant in DMA.

In the DSA our perspective is slightly different. Here again we have the same [inaudible] Commission in terms of importance of ensuring confidence and trust in the digital economy, I think that the risk of a backlash or a less level of engagement from end users is there, so we need to ensure that there is confidence and trust in the products and services that they access online, but here we have a two-fold perspective. As connectivity providers we like on the one hand, the idea of preserving the liability for conduit providers such as ourselves and for passive or neutral hosting and caching services providers, but at the same time we're content owners and we generate and invest in content. We spent

over €2 billion in producing and acquiring content, and from that perspective we like the fact that DSA is moving into innovative ways of tackling illegal content. There is one particular aspect we like and this is the notion of the trusted flaggers, and the idea of importance that the relevance that these players may have in terms of identifying illegal content after having some sort of priority process to act against illegal content they have identified.

Perhaps on the DSA, the biggest challenge that exists is how to treat the myriad of the digital services that have been evolving since that option of the E-Commerce Directive. We think that the asymmetric approach that is followed is the right one, so the level of obligations cannot be the same on a platform that has enormous capabilities to interact with the user generated content, editorial capabilities, technical capabilities to tackle and take down illegal content. Then a player such as cloud provider that does not have the visibility or capacity to identify these sorts of content and to act against it.

So that is a good starting point, the problem here is that size perhaps is not enough and I mean that because sometimes it's micro enterprise or small and medium enterprises that play a very, very important role in terms of disseminating illegal content. So we have to reflect in terms of what could be a risk-based approach and could allow to us tackle the situation when it's SMEs or micro enterprises are the ones that are playing a very impactful role in the dissemination of illegal content.

Other than that, we have of course a preference for harmonisation and more let’s say homogenous approach to the concept of notice and take down, or action taken on the process of notification of illegal content. And very particular preference for stay down obligations because one of problems we're seeing it's that sometimes illegal content is taken down, but it reappears again online so it's necessary to take actually measures that can ensure that this is not happening. So overall, I would they that on the side of Telefonica we are welcoming both the DMA and the DSA to ensure fairness, to ensure contestability and ensure confidence for end users in the digital market, so this is our position. With that I end my opening remarks, Alejandra.

ALEJANDRA DE ITURRIAGA GANDINI: Thank you Carlos. Great to hear that you are

happy with the regulations, that was a joke, we are very happy with your comments on the DMA and you have taken very much to heart the position in the DMA, and I would like to ask you a question regarding if you are as a telecom operator, are you concerned that the DMA regulation evolves in that way that could affect operators such as Telefonica?

CARLOS RODRIGUEZ COCINA: It's a pertinent question Alejandra. I think the short answer would be no, because electronic networks and services are explicitly taken out of the scope of the DMA. However a number of independent interpersonal communication services, so services such as WhatsApp, are within the scope, and we think this is right because in Electronic Communications Code, these services had a different range of obligations than the one provided by traditional players. There was the perception that by being pan-European or regional they could not be subject to general authorisation processes granted by national authorities, they got out of that process with a lower level of obligations compared to our [inaudible] so we think that's logical now they are included in the DMA.

Now the problem the hiccup we have here is that when cross-referencing the code in Article1, the DMA is actually making a mistake giving the impression that all interpersonal communication services should be included under the scope of the DMA. We believe it's a mistake because it contradicts the provision of the Preamble and Recital so we want to make clear and sure that only number independent interpersonal communication services are within the scope of this provision, so I think we see direction of travel for the DMA and this is not pointing to telecom operators. Perhaps one caveat add that we need to point out is that fact that the DMA maybe a little bit over expansive, when providing the Commission the capability of tackling emerging gatekeeping platforms. In that sense, we actually agree with BEREC in the sense that there should be some form of guidance or methodology established to determine when those companies could qualify as such, because otherwise you maybe end up killing the potential competitors, or the innovative companies that may arise in market. Our concern was more into that direction than into being subject to the provision ourselves as the operators.

ALEJANDRA DE ITURRIAGA GANDINI: Great thank you, thank you very much Carlos.

Now it's time to join all together, Annemarie, Benoît, James, David, Carlos. Thank you and thank you to all of you. Now that we are together, do we have some, any kind of reactions with all the ideas that have been expressed by yourselves, any of you want to express the idea about what the other one have said?

JOHAN KEETELAAR: Happy to respond to a couple of things, Alejandra I don't want to steal the floor, I am also conscious of time, I will try to be brief. It's more that I think that David as well as Carlos made a couple of remarks that I found really interesting of course, and I think it's good to reiterate maybe something I said in the first instance and also dive a little bit deeper just for the interest of discussion.

I think that on the novelty of the DMA, let's look at that a little bit again. I think that there's a difference, there is novelty in the DMA as I said in the first instance, even though some of the obligations in the draft DMA might sound or look like obligations as we know them, from for instance the Telco regime or competition cases and we might be familiar with the terminology. I think the point I wanted to make is that applying those without any form of impact assessment, with all stakeholders in the broader ecosystem taken into account, is novel. So I think that aspect is a novelty that I want to emphasise. So the per se prohibitions that kick in for gatekeeper services I think that's novel, and maybe that's also a comment on some of things that Carlos said in the last part, and which also relates about BEREC of course and the EECC and the interplays between the ECC and the DMA and the differences or maybe some of the similarities between traditional services and independent ICS services as they are also defined in the scope of the DMA.

I think that first of all, I don't see but I am also curious to hear from BEREC. It's also in the BEREC opinion, I don't see the DMA as an additional piece of legislation correcting or steering the EECC, I see it as something which co-exists next to the EECC, and we should also bear in mind in the same goes for AMSVD by the way, that the EECC is now only starting to get into enforcement. Only 4 or 5 countries have transposed to date, so we're now facing an era where the EECC will be transposed in the same with AVMSD by Benoît and his colleagues. I also think that the DMA rightly points out that these are regimes that co-exist next to each other, so I agree with Carlos and with BEREC also by

the way that it needs to be perfectly clear when the DMA is final, how this is related to the EECC, for instance but I also want to emphasise that the EECC is the EECC because it's well thought through, acknowledging some of the nature of the independent ICS being different from the traditional Telco services. That said, of course, we all agree that platforms or core platforms will be in scope of the DMA for obvious reasons because they could be, there could be problems with these platforms, that should be addressed via the DMA. But I think this is complementary to the regimes as we know them today.

ALEJANDRA DE ITURRIAGA GANDINI: Thank you Johan for giving us some ideas between the overlapping between the EECC and the DMA. BEREC is working as well in this regard, so we will soon have some document regarding the interplay between ECC and the DMA, that's for sure. Now can we go to, pass the floor to any of you, do any of you want to react to the other point of views or shall we go to questions posed by the floor? Ok. So take a look, we are talking about both pieces of regulation DMA and DSA. I will like to ask somebody firstly, what are the, from your point of view, the interfaces between DMA and DSA?

ANNEMARIE SIPKES: Thank you Alejandra, and maybe to take also Johan's point on board, it is of course there's a lot of legislation on the discussion at the moment and then even the ECC has not been implemented in the majority of the Member States so I fully agree with the view that the DMA is not guiding the code. It will co-exist and it needs fine tuning in wording, and as you said Alejandra at BEREC we are looking into that, but of course that is in the stage of I think fine tuning because, I think Carlos rightly pointed out, the scope of the code is completely different from the scope of the DMA. So where they touch we must make sure that we know what's what, but in general I think it's very clear that they are two separate things. Having said that, the DMA and the DSA are being developed together so that is a a whole different challenge.

I think from, well one of the things that I think both emphasise is the importance of transparency and I think that there is of course given the different goals of these two pieces of legislation, they take different angles and rightfully so, but it is, well let's just say a challenge for the co-legislators to make sure they get it right. For example, at the DMA,

it is states things in the order as large platforms, large gatekeepers should make clear what their policies are whereas the DSA gives a right to make sure that they know what for example the ad policy is. The example, the purely theoretical example for example, that Amazon may on green labels on their ranking. As far as I understand it, it is important that consumers understand why one chooses one set of ranking, instead of another. So do I know I have a ranking, that I am looking at a ranking that favours a green label, that is Amazon green label over non-green label, or non-Amazon green label.

These kinds of transparency issues are both, it's very important that they have both and I also understand that the DSA is much more consumer rights and protection and content so it has a different angle. I do think they complement each other, and the one candidate they have not mentioned yet is the platform for business part which is also of course one piece of the puzzle which is an experience halfway between the EECC and the DMA, just to make things complicated. I think we all know that legislation sometimes can benefit from streamlining but you know, this one does draft laws at the moment, problems arise so there you are. So I do think that in the streamlining and working on definitions, we need to make sure that we have, we uniform our definitions where it is possible, we uniform them when we apply them and that we are very, very clear at the outset which pieces of legislation and which goals and also which regulator or authority that will apply. But I'm sure that the DMA, the DSA as they are following the same path will be made sure by the core legislators that is harmonised to the maximum extent.

ALEJANDRA DE ITURRIAGA GANDINI: Thank you Annemarie. Now we have a question for Benoît, regarding the interplay, talking about interplay between different regulations, now DSA and Directive AVMSD, do you think a systemic whereby relating to systemic content moderation by aligned platforms would be laid down in a single European legal instrument, would appear to be preferable, which one?

BENOÎT LOUTREL: Well I guess it is a tricky question, because at the end of the day we want to protect the internal market, we want to prevent fragmentation, and at the same time, we need to be relevant locally because people live locally. They are all European citizens but still they identify themselves to their local environment, their cultural

environment. So we will need to do both I guess, and to have a systemic approach I guess at EU level in developing this framework and be pragmatic and dynamic in applying it locally. That's why we really think that the heart of the DSA and the future the policy discussion will unfold, discussion on how you organise governance of regulation will be strategic. We know the key ingredients, national regulators, the EU Commission, and the network of involving both national regulators and the Commission, and we're really looking forward to see how this thing can unfold because that's where we think the solution will be in trying to build something which has to be systemic, to be EU-wide, to exist EU-wide to prevent the market fragmentation. At the same time it has to be dynamic to provide answers locally, taking into account the specificity of each of our Member States, or of the timing. Typically if you something taking place in France, just on the eve of a national election, you have to take that into account. Next day will be another country with a different context so the key will be how you frame the governance of network, how we manage in future to moving forward to think of ourselves as national regulators, but member of an EU network. So I guess from now on we are typically speaking for myself, we are CSA a proud member of ERGA.

ALEJANDRA DE ITURRIAGA GANDINI: We're waiting for next plenary on Tuesday, we will discuss on the new document on DSA in ERGA, so we will see you at ERGA as to say about that. Thank you. So I have a question for Johan, so again, regarding the interplay between different legislative files, how do you see this interplay between these different files such as DMA, DSA the EECC and AVSMD. You have addressed that but could you concrete a little bit about that? Thank you Johan. Johan? We have lost Johan?. Ok. We will continue with James, we have a question for James as well so regarding the DSA, James and the content, can you provide some more details about what you already do to stop the sale of content feed around safe products, please.

JAMES WATERWORTH: Sure, yeah, important question, and important that the twin legislative initiatives support this and don't undermine it. I think I mean, there are a number of things we do ourselves today, I am going to list a few. We have something inside Amazon called the Counterfeit Crimes Unit which is a specialist unit that works with, both brands who may suffer from intellectual property infringement, and with the

public sector to bring prosecutions jointly. We did one for example in Italy recently with the fashion brand Valentino so we brought a joint prosecution of a counterfeiter who had been trying to trade counterfeits online so that's one initiative. It's vital of course that counterfeiting and property infringement is not a punishment free crime. The role of public sector is vital because why we can and do prevent sales, refund people in case there would be an abuse, only the public sector can take the necessary action to try to prevent this happening a second or third time when someone is infringing. Beyond that we have initiatives, something called Brand Registry for example. There are thousands or I think now hundreds of thousands of brands who provide basic details of some of their intellectual property to a database which allows to us better enforce their IP. Let me give you a theoretical example. There may be a brand which makes many different types of accessories but doesn't make sunglasses. And so we can use that information that if we see a famous brand name printed on a pair of sunglasses we can say hey they must be fake, because they told us they don't make sunglasses.

With some brands we also provide special permissions in terms of being able to access counterfeit listings on our service so they can go in and suspend sales. We are very careful about the allocation of those privileges, because we wouldn't want something to go wrong, and legitimate listing to be suppressed, but that gives an additional example. I think just turning to product safety which is equally important, as I mentioned there will be European legislation on this topic next month. We have a number of co-operations, well systems ourselves but co-operations also with surveillance authorities and one of things we would like to see in proved in recall notices, or notices about unsafe products. There are moments when unsafe products we will receive a notification from an authority which is very unspecific and means we are unable to identify a specific product which is unsafe, that is not good enough. If a public authority has information about an unsafe product it should be providing it in a precise format and we would like to see this further improved and specified in upcoming legislation. That gives you a flavour of some of the things we do now and some of the things we hope will happen soon to improve further the situation.

ALEJANDRA DE ITURRIAGA GANDINI: Great James, they are very good examples to prevent from unsafe product, good for you. Now I think we have Johan with us, hi Johan.

JOHAN KEETELAAR: I am back, I got your question and then I disappeared, I think. It was not because of the question!

ALEJANDRA DE ITURRIAGA GANDINI: Don't worry.

JOHAN KEETELAAR: Some internet connectivity, that's the problem if you work in connectivity then it hits you if you're on a panel, right? But here I am back again.

ALEJANDRA DE ITURRIAGA GANDINI: Happens to all of us. I want, so regarding the interplay between the different legislative files between the DMA and the DSA, EEC and the media directive, how do you see this interplay between these legislative files?

JOHAN KEETELAAR: Yeah, I think I covered a bit of that already in my previous intervention, so I think first of all, it's important to make this fit and I think that's some other speakers highlighted for this too, especially Annemarie and Benoît who have to deal with enforcement together with the new authority that will enforce DMA and the DSA. Having this clear about who is dealing with what, is one thing, but I think also at the institutional level it should be perfectly clear that it's important to know who is responsible. Also, and here I am reiterating what I said in the first instance because of the conversation, you need to be able to speak to a regulator if you need to comply with rules. If you have overlap between this it will make them complex. That said, I think that ERGA as well as BEREC, irrespective of the way they are structured, whether it's like a more like a federation or a more like informal network of authorities coming together, I think you should also use those mechanisms to do what's best for Europe and the single market. So I think therefore I also like this panel, Annemarie speaking from a regulator which is a converged regulator with multi-disciplinary powers, yourself, Alejandra the same with CNC and Benoît with experience both on the Telco competition side as well as on the media. I think it's important to look at this and in with all the legislative files at hand. Am I still, can you still hear me? I see somebody disappearing. Ok, now it's somebody else with connectivity problems but yep. Alejandra, you're back I think I lost you there. So I think that's more or less what I would like to emphasise, maybe one example, also I think it's important we have to draft DMA and DSA right now but of course there are a lot of negotiations out there. You see a lot of people speaking about it, dynamics, it's also

important to bear this in mind. Last week I know that -

ALEJANDRA DE ITURRIAGA GANDINI: We have lost him again. I think so we have some connection problems.

JOHAN KEETELAAR: I am not sure whether it was on my side.

ALEJANDRA DE ITURRIAGA GANDINI: Go on.

JOHAN KEETELAAR: I will give the floor back to you also to give the others in opportunity to comment.

ALEJANDRA DE ITURRIAGA GANDINI: Thank you to you. So now we go with David, you talked about the Section 230 of the CDA in the USA, and the relationship between this regulation and the online harm bills in UK, how do you think this is related and how do you think this is related with the DSA and does these regulations effectively put a stop to the forced, for the platforms' liability, how do you combine them? We cannot hear you.

DAVID WHEELDON: There you go, I have unmuted myself. We're all committing the classic online faux pas today. Apologies. That's a really interesting question, because Section 230 and the liability regime goes to the heart of a lot of questions about platform responsibility, particularly within the DSA. And of course we know in the US that there is now a big debate about the appropriateness of Section 230, although that that may have changed now with the new administration, and the US has certainly in the past in trade agreements, attempted to insert provisions around platform liability into those agreements. Free trade agreements are slightly beyond our remit today, but it's a really interesting question and I do think though that Section 230 has a significant impact in drafting of the DSA.

As I said earlier, there are some questions about Article 6 and whether or not certain hosts could falsely claim to be eligible for immunity, i.e., that they are passive when in fact they are active. And I do think it's a missed opportunity at the moment not to be more clear, to clarify what an active platform is. In our view that is a platform that optimises content too. We recognise that as a broadcaster that optimises content every day, because we exercise editorial judgment. Well, a lot of the platforms are exercising judgment based

on algorithms but they are nevertheless optimising content. We find it hard to understand how they could be considered to be passive at all, and I think that it would bring a lot of clarity to this argument, and to the DSA, if that was defined more clearly. I think we have got to stop pretending that the way in which content is optimised and indeed optimised against advertising is in anyway acting in the spirit of the passive platforms that originally the E-Commerce Directive sets out. I would hope that is something that would get clarified as the DSA passes through the legislative process.

ALEJANDRA DE ITURRIAGA GANDINI: Thank you David. Yes, the one of the key issues, the platforms' liability and we will work in it. So Carlos, I think you wanted to react on the competition between legislative files that we have addressed before.

CARLOS RODRIGUEZ COCINA: Alejandra, thank you. Just to mention one big dossier that has not been mentioned so far which is the GDPR, to point to the provision in Article 5 to combine personal data that online gatekeepers may be obtaining when providing core platform services, with all the personal data that they may be getting through third parties or when providing different services. And I think it's a core issue because of the model that this company has been very successfully developing with this possibility of accessing an enormous amount of data processing it and extract insights and then create profiles and selling it for online advertisement purposes mainly but it’s been very successful in allowing them to move from certain detailed services in [inaudible] ancillary markets and I see that this provision has a caveat which is the consent of the end user, in line with the provision of the GDPR. So I don't claim to have let's say a solution in terms of how this would, should be filtered in the final version of the DMA but I would like to point it out as an opportunity for the DMA to complement somehow the GDPR, and make sure that that consent from the end user is meaningful, effective, and provided in a user friendly way because we always have this constant problem of whether the consent we provide to engage with some of the services is really a meaningful consent that is provided with full liberty, or whether it's perhaps not so such a free option for the end user. So just to make that point, and I would of course welcome the remarks of others on this as well.

ALEJANDRA DE ITURRIAGA GANDINI: Thank you Carlos, yes we have a question for

you, do you think that DMA and DSA can contribute to the political objective of achieving digital sovereignty in Europe?

CARLOS RODRIGUEZ COCINA: That's an easy one. [laughter]. So well perhaps one point that you made Alejandra in the beginning, and that is that is not a European crusade against Big Tech, or you know, companies coming from the US or China. I think that the concern is about fairness, contestability, trust, spread in a number of jurisdictions so should not be understood as a fight from the EU on American companies, but what is clear is that through this legislative action we think we can create an environment that will foster innovation, that will dynamise the market and will be opportunities for European and non-European countries. If you understand I get details of [*inaudible*] developing technical capabilities in Europe to reduce your dependency from US or China, or certain domains, what you need is to perhaps make sure that these provisions are aligned with the industrial policy provision that the Commission is putting forward and also with developments on competition policy and on sectoral regulation. If I think, for instance, about the situation about in particular for Telco operators with connectivity, we have in the Digital Compass these very ambitious objectives and targets of having gigabit connectivity and 5G populated areas in 2030, but at the same time we have actions on the competition policy side, be it through state aid provisions, be it through the merger and consolidation in the market, be it through the use of co-operation between players in the market. Some dispositions of sectoral regulation continue eroding the capability of the operator and ability to invest in networks. Perhaps the problem for the leaders in Europe, we need alignment between the vision and ambition and the different domains, policy and regulatory domains that can lead us there.

ALEJANDRA DE ITURRIAGA GANDINI: Thank you Carlos. Now we have a question from the floor, I think whoever wants to answer it. So it is, "I am interested in the panel's views on whether and how DMA and DSA be integrated more closely. One way could be to ensure their aims are aligned, at the very least not conflicted. Another is consistent definitions." So any, do we have any idea how DMA and DSA could be integrated more closely? Any of you have any ideas? Or what could we propose to the Commission, to the Council and the Parliament as well.

DAVID WHEELDON: Can I ask a question to the questioner, is to what end? I mean again I am bringing some experience as a broadcaster and Telco. We don't try to get the Telcos Framework and AVMSD aligned, we don't create the same definitions. We're dealing with two different things here. I'm not convinced that alignment as described by the question makes a lot of sense. But I defer to the regulators who may have their own views on this, but as business it wouldn't make much sense to me.

JAMES WATERWORTH: Just to build on that point I think at a very minimum they shouldn't be contradictory, so I fully agree that they don't necessarily need to be the same, that they there may be different challenges which require better and different tailoring, something I have talked about, but what is clear they should not be contradictory and self-defeating. I want to highlight again the point about fraud that I made, we should not see a provision in the Digital Markets Act which potentially is defeating to the objective in the Digital Services Act for making online services act safer and more trusted. They should be pushing in the same direction even if they don't do the same thing.

BENOÎT LOUTREL: I guess I agree, also on the fact that the idea they should be aligned, does not make sense for me. Both texts have different aims which are legitimate just like GDPR has another aim, protecting privacy. We just need to really understand the articulation between both and it's nothing new. I believe we have learnt in telecommunication, big Telcos have learned to work with several regulators at the same time but on different issues of competition regulation where they were erring on the wrong side of the competition law, or dealing with the GDPR regulators, or dealing with Telco regulator, or in France dealing with the media regulator when they were distributing media services. So there’s nothing new. We just need clarity, we need some more work to clearly understand how the DSA and DMA interact together, and also how the DSA interacts with the AVMSD director as mentioned earlier.

ALEJANDRA DE ITURRIAGA GANDINI: Thank you very much. Anyone wants to, ok. I agree with you, I mean it's both regulations have different scopes, different points of view, and I mean they should be maintained as they are, even though we may improve them with all the ideas you have posed during your presentations.

So now we are in the end, I would like to thank you very much to all of you, for sharing with us all the ideas from the regulator points of view, and from the industry. I would like to thank the IIC and BEREC of course for organising this debate about regulation which is not very easy, and you have proved to be great in doing that so thank you very much and we will keep in contact. Now, I will have to say hello to Jeremy who is the moderator for the next session. Jeremy is the Chair, former Chair of ComReg the Irish telecoms regulator. Thank you to all of you and bye-bye. **